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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 001392

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DEPARTMENT FOR S/WCI - PROSPER/MILLER, EUR - JONES, L/EUR -
LAHNE, DRL, INR/WCAD - SPRIGG

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY

TAGS: [PREL](#) [PHUM](#) [BK](#) [HR](#) [SR](#) [NL](#) [ICTY](#)

SUBJECT: ICTY: SENIOR OTP OFFICIALS DOWNBEAT ON "NEW ERA"
IN SAM/ICTY COOPERATION

REF: BELGRADE 1158

1. (U) CLASSIFIED BY: Clifton M. Johnson, Legal Counselor.
Reason: 1.5(D) and 1.6.

2. (C) Summary. According to Chief of Investigations Patrick Lopez-Terres of the International Criminal Tribunal for the Former Yugoslavia (ICTY), cooperation with Belgrade authorities has not significantly improved since December. Despite the positive press that accompanied Chief Prosecutor Carla Del Ponte's recent visit to Belgrade, Lopez-Terres maintains that Serb authorities were still responding to requests for documents and requests for waivers for witnesses only under strong pressure from the ICTY if at all. Del Ponte, Political Adviser, Jean-Daniel Ruch, provided a similar, downbeat, assessment, suggesting that the new era in SAM/ICTY cooperation may be short-lived unless the OTP quickly sees tangible results. End summary.

3. (C) Lopez-Terres, who accompanied Del Ponte on her recent visit, refused to identify the exact number of outstanding requests except to say that there were "tens of requests" outstanding and that many were substantive. He also indicated that the Prosecutor was still locked in a fight with the Serbs regarding a so-called Rule 54 bis motion (Note: Rule 54 bis is used by the Prosecutor to request an order compelling a State to produce documents or information. End note). Lopez-Terres cited the fact that the Prosecution had to resort to Rule 54 bis coupled with the fact that there had been no movement on this issue by the Serbs since December as evidence of continued Serb intransigence.

4. (C) Lopez-Terres also complained bitterly about the Serb attitude towards fugitive war criminals. Exasperated, he stated that the Serbs seemed to believe that the arrest and transfer of Veselin Sljivancanin -- wanted for the Vukovar massacres -- would somehow obviate the need for the Serbs to arrest and transfer any of the other fugitive war criminals, many of who the OTP believes are hiding in Serbia.

5. (C) Lopez-Terres did admit that there had been some progress, particularly on the Serb commitment to set up its own war crimes court. He indicated, however, that this was clearly a long-term effort that was only now in the conceptual stage. He, in turn, was more focused on the requests, including requests for access to state archives, that had yet to be answered by Serb authorities. The failure to answer these requests, he maintained, and, in particular, the failure to grant the waivers necessary for some witnesses to testify were damaging the Prosecutor's ability to complete investigations and conduct trials.

5. (C) When asked by an embassy legal officer to square positive local and international press reporting of Del Ponte's recent visit with his own very negative assessment, Lopez-Terres at first dodged the issue entirely, clearly not wanting to be put in a position where he was contradicting the Prosecutor. When pressed, however, he resorted to a middle ground, suggesting that the press had made more of the statements than was warranted.

6. (C) Political Adviser Ruch sounded a similarly downbeat note. He bluntly noted that despite the "nice atmosphere" and assurances flowing from the meetings, there had been "no change" in Serb cooperation toward the ICTY. Tracking many of points raised separately by Lopez-Terres, he first highlighted the lack of progress in arresting and transferring Mladic and Sljivancanin. While conceding that the transfer of Radic was a positive step, he was dismissive of ongoing efforts to transfer Stanisic and Simatovic noting

that these transfers were in the SAM,s interest and required little political will.

17. (C) With respect to document transfers and testimony authorization, Ruch similarly noted that while the OTP and SAM had reached an understanding on a process for giving the OTP access to the documents it needed in exchange for an OTP commitment to support appropriate protective measures aimed at preventing the shared documents from being used against SAM in the ICJ case, the process itself was "too cumbersome" and was already showing signs of not working. He explained that under the agreed approach, OTP would identify specific documents of interest, SAM would then locate and show them to OTP investigators, OTP would then identify the specific documents or excerpts that they wished to introduce as evidence, SAM would then consider and request protective measures, the OTP would then confirm that it could support the requested protective measures, at which point an internal SAM process would review and approve the documents for release. Ruch noted that as a first test of this process the OTP had immediately delivered to SAM a request for access to certain documents but that SAM had yet to respond and move the process to the second step by providing access to OTP. Given this situation, the OTP intended to press forward with an order compelling production under Rule 54 bis.

18. (C) Ruch summed up by stating that the OTP believed there was "no change" in Serb cooperation with the ICTY and that it was "the same" as before Del Ponte,s recent trip to the United States. Underscoring the point, he passed on a copy of May 23 letter to the Secretary from five members of Congress which stated that progress towards meeting certification requirements "remains insufficient." He intimated that the OTP had been involved in the letter and shared its assessment.

19. (C) Comment: Lopez-Terres and Ruch are Del Ponte,s closest confidants on substantive matters in the OTP. As such, their uniform emphasis on the negative aspects of Belgrade,s cooperation are a striking and surprising contrast to the upbeat tone offered by Del Ponte in her public statements following her Belgrade visit (See Reftel). While Lopez-Terres was very careful not to directly contradict Del Ponte's public statements, it was also clear, from Lopez-Terres' day-to-day, operational standpoint, that little of substance had changed; that it was, in Lopez-Terres own words, "business as usual" with Serb authorities. One explanation for the divergence is that Del Ponte is simply out of touch with actual developments on the ground with respect to SAM cooperation. More likely, given the sources, the comments of Lopez-Terres and Ruch track her own view and indicate that her positive public statements were a calculated effort at seeing whether a change in the atmospherics of the SAM/ICTY relationship might deliver better results than her previous more combative approach. Given the comments of those closest to her on these issues, it appears that this honeymoon will be short-lived unless the SAM acts quickly to satisfy an impatient OTP. End Comment.
SOBEL